

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JUAN P. DELEON,)	
)	
)	
Plaintiff,)	Civil No.: 3:12-cv-00408-JE
)	
v.)	
)	
PNC BANK, NATIONAL ASSOCIATION;)	
LSI TITLE COMPANY OF OREGON, LLC;)	
and SELECT PORTFOLIO SERVICING, INC.,)	FINDINGS AND RECOMMENDATION
)	
Defendants.)	
_____)	
PNC BANK, NATIONAL ASSOCIATION,)	
)	
Consolidated Plaintiff,)	
)	
v.)	
)	
JUAN P. DELEON, SIN B. DELEON,)	
and ALL OCCUPANTS,)	
)	
Consolidated Defendants.)	

John A. Cochran
3404 SE 45th Ave
Portland, OR 97206

Attorney for Juan Deleon and Sin Deleon

Eric L. Dahlin
Gregory A. Chaimov
Davis Wright Tremaine, LLP
1300 SW Fifth Avenue
Suite 2300
Portland, OR 97201-5630

Attorneys for PNC Bank

JELDERKS, Magistrate Judge:

On March 7, 2012, PNC Bank, National Association (“PNC”) removed consolidated Multnomah County Circuit Court cases 1201-00752 and 120000608E to federal court based on federal question jurisdiction. Deleon’s action alleges multiple violations of lending laws and seeks damages and a declaratory judgment setting aside the trustee’s sale of the Deleons’ residence in Gresham, Oregon. PNC’s action seeks to evict the Deleons from the same property.

On June 15, 2012, the court received a notice of settlement indicating that the parties were in the process of finalizing a settlement agreement and intended to submit a formal dismissal within thirty days of the date of filing the notice.

Having not received a formal dismissal by the deadline set by the parties, the court held a telephone status conference on September 11, 2012. Both in email correspondence to the court prior to the conference and at the status conference, counsel for the Deleons represented that he had been unable to contact his client for several weeks either by phone or in person and had been unsuccessful in attempting to communicate with him regarding the settlement agreement reached with opposing parties.

The court, therefore, set a subsequent status conference for September 18, 2012, and directed Mr. Deleon to appear in person. On September 17, 2012, counsel for the Deleons filed an affidavit of service which showed that notice of the September 18th conference was served on

the Deleons on September 13, 2012, by posting of the documents on the front door of the their residence.

On September 18th, attorneys appeared on behalf of the Deleons, PNC and Select Portfolio Servicing. Mr. Deleon, however, failed to appear and Deleon's counsel represented that he had not had contact with his client. Under the circumstances, the court finds that Deleon has failed to appropriately prosecute this action. Accordingly, I recommend that Deleon's action be dismissed with prejudice for failure to prosecute.

Conclusion

Deleon's action should be DISMISSED with prejudice for lack of prosecution and the consolidated action, brought by PNC Bank, National Association, should be DISMISSED without prejudice. A judgment should be entered dismissing Deleon's action with prejudice, dismissing PNC's action without prejudice and denying pending motions, if any, as moot.

Scheduling Order

This Findings and Recommendation will be referred to a district judge. Objections, if any, are due October 12, 2012. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

If objections are filed, then a response is due within 14 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED this 25th day of September, 2012.

/s/ John Jelderks
John Jelderks
U.S. Magistrate Judge